

have caused interference willfully or maliciously to a radio system or radio station." The Bureau responded by referring Kay to Attachments 21, and 28-38. The attachments contained either unsupported allegations or beliefs by other licensees, but were devoid of even one material fact which could establish a specific allegation by the Bureau that Kay either willfully or maliciously interfered with the radio communications of another system, in violation of Section 333.

At Interrogatory 4-2 of his First Set of Interrogatories, Kay had requested that the Bureau "[p]lease identify each radio station or system which Kay is alleged to have employed in willfully or maliciously causing interference to another radio system or radio station." The Bureau referred Kay to its response to the preceding interrogatory. The Bureau's response to the preceding interrogatory did not contain any specific instance or fact which would identify any radio station or system which Kay is alleged to have employed in willfully or maliciously causing interference to another radio system or radio station.

At Interrogatory 4-3 of his First Set of Interrogatories, Kay had requested that the Bureau "[p]lease identify each radio system or radio station which is alleged to have suffered interference which was willfully or maliciously caused by Kay." The Bureau referred Kay to its response to the preceding interrogatory. The Bureau's response to the preceding interrogatory did not contain a specific instance or fact which would identify any radio station or system which is alleged to have suffered interference which was willfully or maliciously caused by Kay.

At Interrogatory 4-4 of his First Set of Interrogatories, Kay had requested that the Bureau "[p]lease identify each person or entity which is alleged to have suffered interference which was willfully or maliciously caused by Kay." The Bureau referred Kay to its response to the preceding interrogatory. The Bureau's response to the preceding interrogatory did not contain any specific instance or fact which would identify any person or entity which is alleged to have suffered interference which was willfully or maliciously caused by Kay.

At Interrogatory 4-6 of his First Set of Interrogatories, Kay had requested that the Bureau "[p]lease identify each person who is alleged to have suffered interference willfully or maliciously caused by Kay who was thereafter called on by Kay or his sales staff with an offer to provide the person with higher quality communications service." The Bureau referred Kay to its response to the preceding interrogatory. The Bureau's response to the preceding interrogatory did not contain any specific instance or fact which would identify any person who is alleged to have suffered interference willfully or maliciously caused by Kay who was thereafter called on by Kay or his sales staff with an offer to provide the person with higher quality communications service.

At Interrogatory 4-7 of his First Set of Interrogatories, Kay had requested that the Bureau

"[w]ith respect to each instance in which Kay is alleged to have willfully or maliciously caused interference to another radio station or system, please describe the means by which Kay is alleged to have caused interference willfully or maliciously to another radio station or system. By way of explanation and not of limitation, the description should set forth, inter alia, the date and time of the alleged interference, the equipment used to cause the interference, the equipment suffering the interference,

*and the type or mode of interference (for example, but not limited to, co-channel interference, adjacent channel interference, or intermodulation interference)."*

The Bureau referred Kay to its response to the preceding interrogatory. The Bureau's response to the preceding interrogatory did not contain any specific instance or fact which could identify or describe the means by which Kay was alleged to have caused interference willfully or maliciously to another radio station or system. The Bureau failed to submit any type of description such as the date and time of the alleged interference, the equipment used to cause the interference, the equipment suffering the interference, or the type or mode of interference.

In Interrogatories 4-1, 4-2, 4-3, 4-4, 4-6, and 4-7, Kay requested information from the Bureau that could possibly substantiate the allegations in Issue 10(e). The documentation submitted by the Bureau failed to provide even one instance in which the Bureau alleges that Kay willfully, or maliciously interfered with any specific radio station. Since there is no genuine issue of material fact for determination at hearing that Kay ever willfully or maliciously interfered with the radio communications of any other system, partial summary decision should be granted in favor of Kay with respect to Issue 10(e).

#### Issue 10(f)

Issue 10(f) of the HDO directed the Presiding Judge "to determine whether James A. Kay, Jr. has abused the Commission's processes in order to obtain cancellation of other

At Interrogatory 5-1 of his First Set of Interrogatories, Kay had requested that the Bureau "[p]lease state all relevant facts concerning each instance in which Kay and/or his sales staff is alleged to have misused or abused the Commission's processes." The Bureau referred Kay to Attachments 21, 27, and 39-42 which contained complaints and allegations but not one instance wherein the Bureau identified with specificity any relevant fact establishing that James A. Kay, Jr. has ever abused the Commission's processes in order to obtain cancellation of other licenses.

At Interrogatory 5-2 of his First Set of Interrogatories, Kay had requested that the Bureau "[p]lease state all relevant facts concerning each instance in which Kay and/or his sales staff is alleged to have fraudulently induced a person or entity to sign a blank Commission form." The Bureau referred Kay to its response to Interrogatory 5-1. The Bureau's response to Interrogatory 5-1 did not contain any specific instance or fact which could identify or describe the means by which Kay is alleged to have fraudulently induced a person or entity to sign a blank Commission form.

At Interrogatory 5-3 of his First Set of Interrogatories, Kay had requested that the Bureau "[p]lease state all relevant facts concerning each instance in which Kay and/or his sales staff is alleged to have induced a person or entity to sign a form, the intent of which was misrepresented by Kay or Kay's employees." The Bureau referred Kay to its response to Interrogatory 5-1. The Bureau's response to Interrogatory 5-1 did not contain any specific instance or fact which could identify or describe the means by which Kay and/or his sales

staff was alleged to have induced a person or entity to sign a form, the intent of which was misrepresented by Kay or Kay's employees.

At Interrogatory 5-4 of his First Set of Interrogatories, Kay had requested that the Bureau "[p]lease state all relevant facts concerning each instance in which Kay has allegedly misappropriated a customer's license." The Bureau referred Kay to its response to Interrogatory 5-1. The Bureau's response to Interrogatory 5-1 did not contain any specific instance or fact which could identify or describe the means by which Kay has allegedly misappropriated a customer's license.

At Interrogatory 5-5 of his First Set of Interrogatories, Kay had requested that the Bureau "[p]lease identify each person or entity who is alleged to have been fraudulently induced by Kay and/or sales staff to sign a blank Commission form." The Bureau referred Kay to its response to Interrogatory 5-1. The Bureau's response to Interrogatory 5-1 did not contain a specific instance or fact which could identify any person or entity who is alleged to have been fraudulently induced by Kay and/or sales staff to sign a blank Commission form.

At Interrogatory 5-6 of his First Set of Interrogatories, Kay had requested that the Bureau "[p]lease identify each person or entity who is alleged to have been induced by Kay and/or his sales staff to sign a form, the intent of which was misrepresented by Kay or Kay's employees." The Bureau referred Kay to its response to Interrogatory 5-1. The Bureau's response to Interrogatory 5-1 did not contain any specific instance or fact which could

identify each person or entity who is alleged to have been induced by Kay and/or his sales staff to sign a form, the intent of which was misrepresented by Kay or Kay's employees.

At Interrogatory 5-7 of his First Set of Interrogatories, Kay had requested that the Bureau "[p]lease identify each former licensee from whom and the call sign of each station of which Kay allegedly misappropriated a license." The Bureau referred Kay to its response to Interrogatory 5-1. The Bureau's response to Interrogatory 5-1 did not contain any specific instance or fact which could identify any former licensee from whom and the call sign of any station of which Kay allegedly misappropriated a license.

At Interrogatory 5-8 of his First Set of Interrogatories, Kay had requested that the Bureau "[w]ith respect to the information requested by the previous interrogatory, please state the date on which Kay allegedly misappropriated the license and the date on which the former licensee realized the alleged misappropriation." The Bureau referred Kay to its response to Interrogatory 5-1. The Bureau's response to Interrogatory 5-1 did not contain any specific instance or fact which could identify the date on which Kay allegedly misappropriated any license or the date on which the former licensee realized the alleged misappropriation.

Kay provided the opportunity in his interrogatories for the Bureau to identify those alleged abuses of the Commission's processes by requesting that the Bureau identify each specific instance wherein Kay allegedly abused the Commission's processes. Kay requested

information from the Bureau concerning the actions of Kay and/or his sales staff and Kay received nothing in the responses which would warrant a finding that Kay violated or abused the Commission's processes. The Bureau submitted complaints containing allegations, yet, no facts were submitted which constitute an allegation by the Bureau. The Bureau failed to disclose any material fact concerning any instance in which it alleges that Kay and/or his sales staff caused, misused or abused the Commission's processes. Since there are no genuine issues of material fact for determination at hearing which support the allegation that Kay has abused the Commission's processes in order to obtain cancellation of other licenses, partial summary decision should be granted with respect to issue 10(f).

#### Issue 10(h)

Issue 10(h) of the HDO directed the Presiding Judge "to determine if any of James A. Kay's licenses have automatically cancelled as a result of violations listed in subparagraph (c) pursuant to Sections 90.155, 90.157, 90.631, or 90.633 of the Commission's Rules," HDO at paragraph 10(h). At Interrogatory 10h-1 of his First Set of Interrogatories, Kay had requested that the Bureau "[p]lease identify each and every license the Commission alleges to have cancelled automatically as a result of a violation of Sections 90.155, 90.157, 90.631, or 90.633 of the Commission Rules." The Bureau submitted a nonresponsive answer to the interrogatory by stating that "[t]he purpose of this proceeding is to determine whether some or all of Kay's stations have been cancelled automatically by operation of law. Therefore, the licenses of all of Kay's stations, including those that he owns, operates and controls are in issue." The Bureau failed to submit a single instance wherein it specifically purported to

be able to show that a license cancelled automatically as a result of a violation of Section 90.155, 90.157, 90.631, or 90.633 of the Commission Rules.<sup>2</sup>

No prima facie case exists because the Bureau failed to specify any licenses which had cancelled automatically as a result of a violation of Section 90.155, 90.157, 90.631, or 90.633 of the Commission's Rules. In the absence of a single factual allegation by the Bureau of an instance wherein any one of Kay's licenses cancelled automatically as a result of a violation listed in subparagraph 10(c) of the HDO, there is no genuine issue of material fact and partial summary decision should be granted with respect to Issue 10(h).

#### Conclusion

Kay respectfully requests that the Presiding Judge issue a partial summary decision in favor of Kay with respect to those designated issues about which there is no genuine issue of material fact for determination at hearing.

Respectfully submitted,  
JAMES A. KAY, JR.

By:

  
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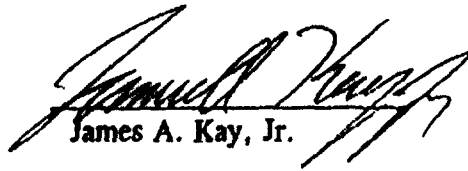
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<sup>2</sup> Kay cited each of these Rule Sections in their entirety, *supra*.



DECLARATION OF JAMES A. KAY, JR.

I declare under penalty of perjury that the foregoing Motion for Partial Summary  
Decision is true and correct. Executed on April 17<sup>th</sup>, 1995.

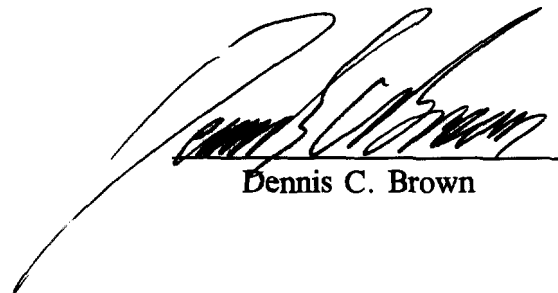
  
James A. Kay, Jr.

CERTIFICATE OF SERVICE

I, hereby certify that on this 17<sup>th</sup> day of April, 1995, I served a copy of the foregoing Request for Permission to File Motion for Partial Summary Decision on each of the following persons by placing a copy in the United States Mail, first-class postage prepaid:

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